

United States District Court  
Southern District of New York

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Anthony Spinale

Plaintiff,

-against-

Lindsay Mitchell and Daniel Favale

Defendants

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REPLY TO DEFENDANT'S NOTICE  
OF REMOVAL

07 Civ. 08760- CM

From the Supreme Court of the State of  
New York, County of Bronx

Index No. 20180-07

Plaintiff, Anthony Spinale, by his attorney, Linda Strumpf, hereby formally opposes removal of the above captioned action to the United States District Court for the Southern District of New York. The grounds for denial of removal are as follows:

1. On Wednesday September 5, 2007 at 2:18 PM, process server Assmet Abderaham served a copy of the summons and complaint (attached as defendants exhibit 1) on defendants Lindsay Mitchell and Daniel Favale.
2. Service was satisfied by delivering a true copy of both the summons and complaint to "Jerry Smith", a co-worker, of suitable age and discretion. (A copy of the affidavit of service for both Lindsay Mitchell and Daniele Favale are attached as Exhibit A).
3. Pursuant to 28 U.S.C. § 1446 (b)

"The notice of removal of a civil action or proceeding shall be filed within thirty days after the receipt by the defendant,

through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within thirty days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.”

Plaintiff properly served all necessary parties in this case on September 5, 2007.

Therefore defendant’s had 30 days to file their notice of removal. Defendants did not file their notice of removal until October 10, 2007, after the 30 days had expired.

4. According to 28 U.S.C. §1447(c) “

“A motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under section 1446(a). If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded.”

Plaintiff’s motion to remand is timely as we received notice of removal on October 10, 2007.

WHEREFORE, Plaintiff requests that Defendants motion to remove this matter be denied as untimely under 20 U.S.C. §1446 (b).

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/s/ Linda Strumpf  
LINDA STRUMPF, ESQ. (LS-2948)  
Attorney for Plaintiff  
2 West Road  
South Salem, NY 10590  
(212) 566-6800  
Our File No. 65140

United States District Court  
Southern District of New York

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Anthony Spinale  
Plaintiff,

07 Civ. 08760- CM

-against-

CERTIFICATE OF SERVICE

Lindsay Mitchell and Daniel Favale  
Defendants

-----X

I am an attorney duly admitted to practice law in the State of New York, and affirm the following under the penalties of perjury:

I am over 18 years of age, not a party to this action and reside in the State of New York. On October 17, 2007, I caused a copy of the foregoing Reply to Defendant's Notice of Removal, to be served upon the following by Federal Express, delivery charges pre-paid:

Michael J. Garcia  
United States Attorney  
Southern District of New York  
Carolina A. Fornos  
Assistant United States Attorney  
86 Chambers Street  
New York, NY 10007

Dated: October 17, 2007

\_\_\_\_\_/s/ *Linda Strumpf*\_\_\_\_\_  
Linda Strumpf, Esq.